IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 19679 of 2007(P)

AGAINST THE ORDER IN EP 107 2005 IN
OS.178/2003 of MUNI-MAGI.COURT,PATTAMBI

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PETITIONER:

ABDU S/O.THAYAMKULAM MOIDU,
KOTHACHIRA AMSOM DESOM, OTTAPALAM TALUK.

BY ADV. SRI.E.R.VENKATESWARAN

RESPONDENTS:

NADEERA D/O.THAYAMKULAM ABDU,
KOTHACHIRA AMSOM AND DESOM IN OTTAPALAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN,J

W.P.(C) NO.19679 of 2007

Dated this the 27th day of June, 2007

JUDGMENT

This writ petition is filed seeking to set aside the order passed by the Munsiff-Magistrate, Pattambi in E.P.107/2005. A perusal of the order would show that a decree has been obtained against the present writ petitioner and the writ petitioner pleaded no means. One of the ground was that the property is attached and he is not having any income. Though the property is attached, it has not been sold and admittedly 35 coconut trees are standing in the property. It is also discernible that the present petitioner was in Gulf Countries for almost two decades and he has atleast admitted at one point of time that he was doing kopra business. It is true that at the stage of evidence he has denied the same. The court on weighing the evidence of PW1 and RW1, and on preponderance of probabilities decided to accept the evidence of PW1, and therefore, found that the writ

petitioner is having sufficient means to pay and he is refusing or neglecting to pay the amount and therefore ordered arrest. I do not find any illegality or irregularity committed by the court below in passing such an order. Therefore an order on merit does not require any interference. At the same time if the judgment debtor is really eager enough to pay the amount, he must be given breathing time to do it and therefore the court below is directed not to implement the order of arrest for a period of two months from today and in the meanwhile the writ petitioner can settle the matter with the decree holder or attempt to pay off the amount for satisfaction of the decree. In case of failure, the Court can proceed in accordance with law.

The writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

CSS